

# Department of Planning and Development



**Zoning Reform Group**  
**March 8, 2011**

**Zoning in Newton**

# A Brief History of Zoning



- First adopted in 1916 by New York City to regulate use and development of land
- Became standard adopted around country
- Based on separation of uses, protecting health, safety, property values, enjoyment of property by separating noxious / incompatible uses



# A Brief History of Zoning



- Zoning quickly adopted by suburbs
- Upheld by Supreme Court as Constitutional in 1926 as valid exercise of police power (Euclid, OH vs. Ambler Realty)

# A Brief History of Zoning



- Now the principal means of regulating development, implementing comprehensive plans
- Traditional (“Euclidian”) zoning separates uses, but newer trends include:
  - **Performance zoning:** focuses on mitigating effects of development
  - **Form-based zoning:** focuses on building/urban form
  - **Incentive zoning for desirable development:** e.g. density bonuses for providing public space or some other public good



3/8/87/ Depot, B. & N. R. R., Newton Highlands, Mass. Many thanks for cards.  
I enjoy them so much. This is 3 minutes walk from  
my home. Our railroad tracks are all lowered.  
Don't want me to send some cards of Boston? A.



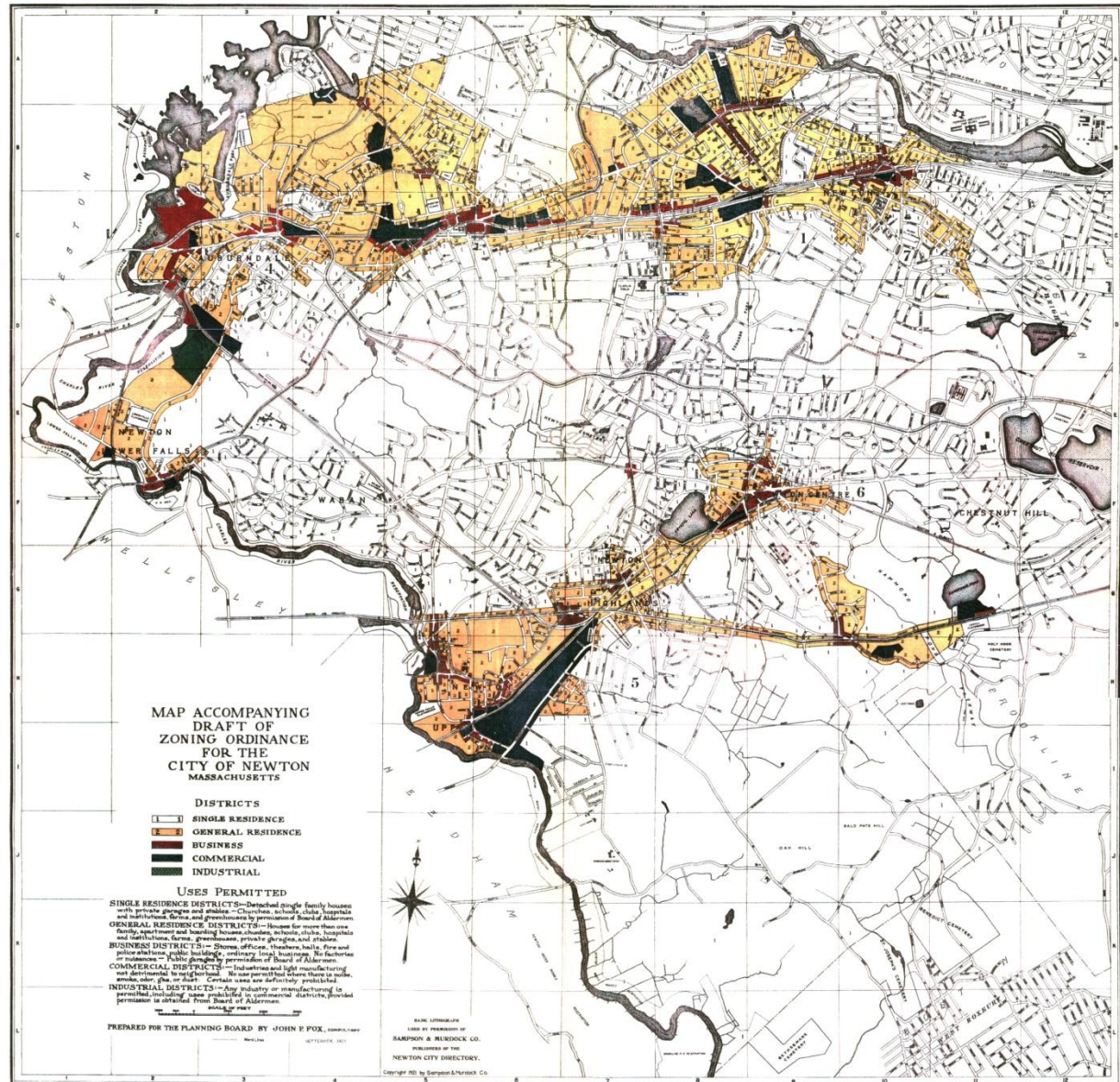
# Newton's Zoning Ordinance

Adopted 1922 to advance the health and development of the City

Original districts:

- Private residence
- General residence
- Business
- Manufacturing
- Unrestricted

*1921 draft zoning map  
– not adopted*



# Major Amendments



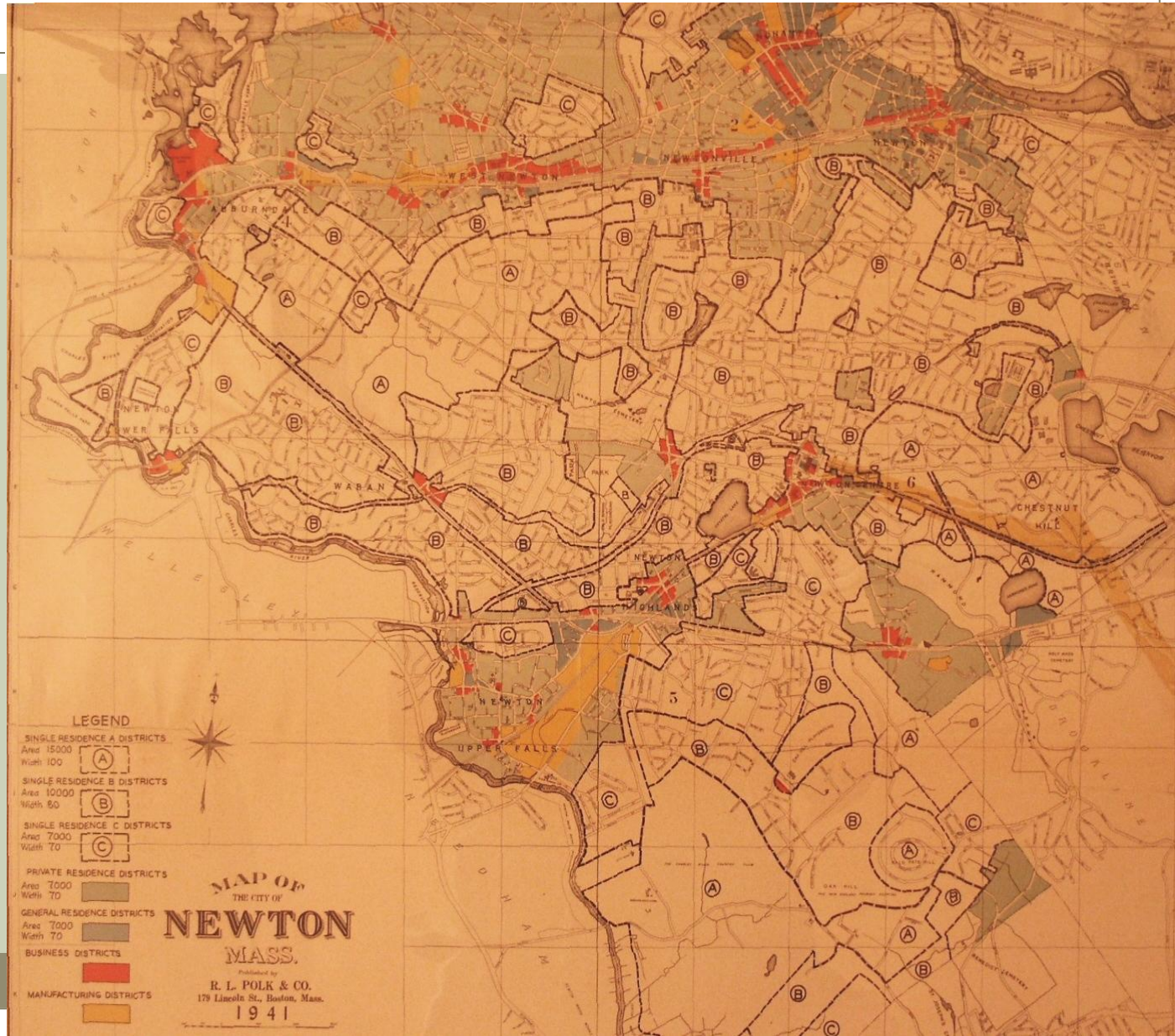
- Major overhauls in 1940, 1953, and 1987
  - **1940:**
    - ✦ Single residence zones divided into A, B, and C; now 8 districts
    - ✦ Minimum lot area and frontage requirements established
    - ✦ Unrestricted district abolished



# Major Amendments

## 1941 Zoning Map

### A, B, and C districts





# Major Amendments



- **1951:** Multiple district changes: now 9 districts (more residential & business)
- **1953:**
  - ✦ Lot sizes, setbacks, and side setbacks increased
  - ✦ Changes moved Newton toward LESS density, with more restrictive dimensional controls
  - ✦ However, did not sunset prior standards (as done in other communities), resulting in current two-tier system where dimensional controls for “old” and “new” lots differ
- **1959:** More districts adopted; now 11

# Major Amendments



- **1987:** major reorganization
  - ✦ Reissued text with renamed zones
  - ✦ Minimum open space requirements added
  - ✦ MU zones added to Needham Street
  - ✦ New controls added for institutions and commercial development, dormitories (Table 2)
  - ✦ Added Table 3 – Dimensional Requirements for Commercial Districts

# Other Amendments



- Numerous other issue-specific changes through the years:
  - Cluster zoning - 1978
  - Accessory apartments – 1989, 2010
  - Inclusionary housing – 1989, 1991, 2003, 2004, 2009
  - Residential floor area ratio – 1997, 2009, 2011
  - Wireless section – 1998
  - Accessory buildings, including garages – 1999
  - Institutional Uses – 1973, 1987
  - Lots – 1940, 1953, 1960, 2001; rear lots – 1940, 1951, 2004
  - Open space – 1973, 1987
  - Setbacks – 1922, 1929, 1940, 1949
  - Signs – 1952, 1965, 1967, 1969



# Recent Changes

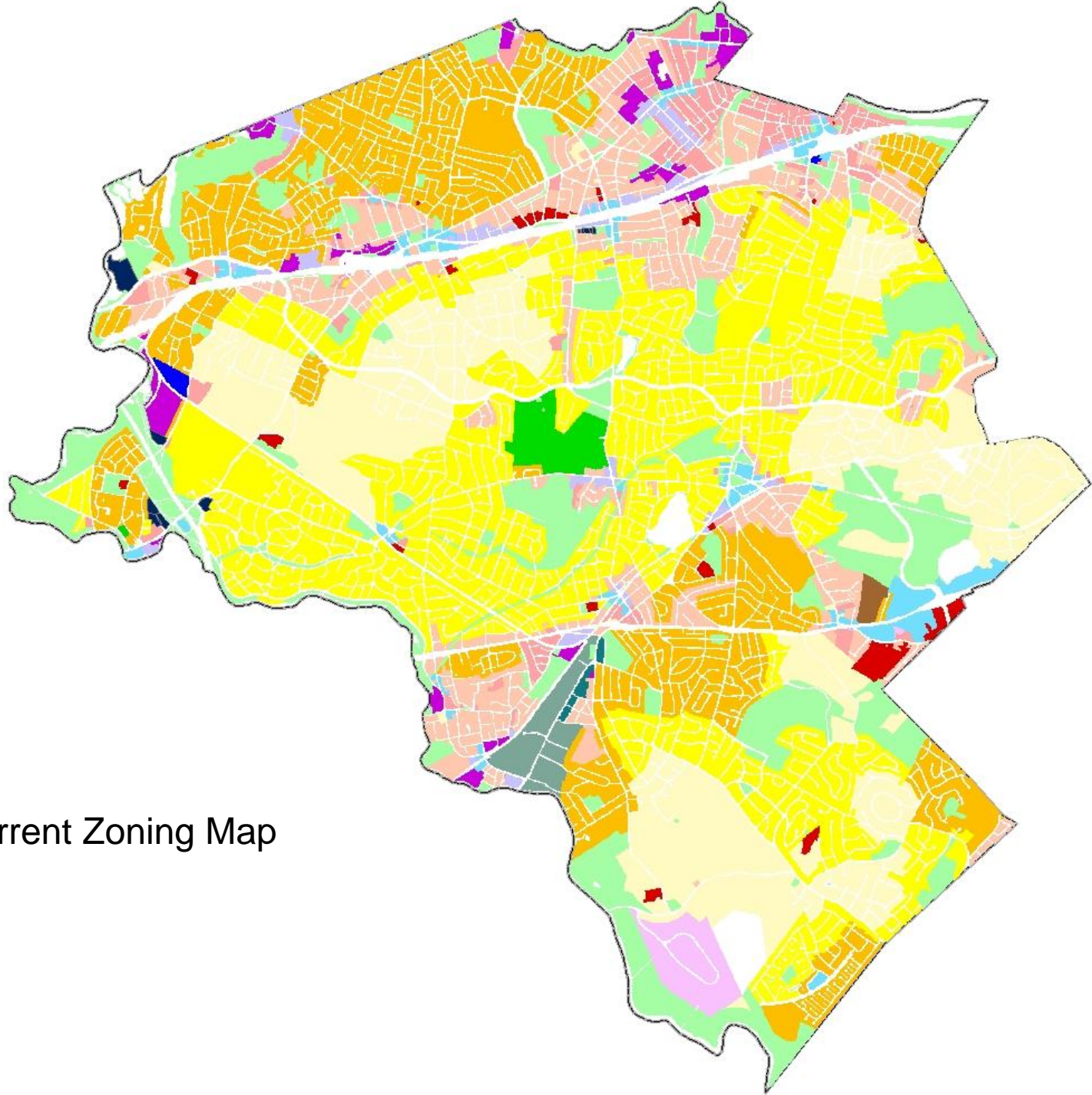


2007 to present:

- FAR revisions
- Accessory apartments
- Inclusionary housing amendments
- Grade change/engineering review
- Green building special permit requirement
- Planned Multi-Use Business Development (PMBD)



*Oxford House on Walnut St. includes inclusionary units*



Current Zoning Map

# Mass. Chapter 40A



- MA Home Rule (1967) grants right of self-government to cities and towns
- In MA, present zoning enabling act is MGL Chapter 40A (1975), which imposes limits on municipalities' exercise of home rule powers in the context of zoning
- Zoning in Ch. 40A means “ordinances and by-laws, adopted by cities and towns to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety, and general welfare of their present and future inhabitants”



# Mass. Chapter 40A



- Recognizes multiple zoning objectives:
  - Lessening congestion
  - Avoiding incompatible uses
  - Fire safety and provision of water and sewer, drainage, and adequate light and air
  - Providing adequate open space
  - Conservation of natural resources
  - Encouragement of housing for all income levels
  - Encouragement of consideration of comprehensive plan

# Mass. Chapter 40A



- **Limits** zoning authority in particular uses/cases, including:
  - Building materials/methods (Building Code regulates)
  - Agricultural uses
  - Religious/educational uses (Dover Amendment)
  - Family daycare and child care facilities
  - Interior of single-family residences
  - Solar energy
  - Anything inconsistent with state law
- “Spot zoning”: arbitrary treatment
- “Uniformity”: code must apply uniformly

# Zoning Features



- Typically, zoning regulates:
  - Building dimensions and location on a lot – height, mass (floor area), setbacks, frontage requirement
  - Density – minimum lot size, mass
  - Use
- Flexibility in zoning: special permits
- Exceptions to zoning:
  - Variances (ZBA)
  - Nonconforming uses and structures (Zoning)
  - In MA, Chapter 40B, Comprehensive Permits (ZBA)



# Zoning Features



- **Special Permit:**

- An approval for something that is not allowed by right but is expressly authorized by the Zoning Ordinance subject to certain criteria
- Zoning Ordinance spells out cases where special permits may be granted by Special Permit Granting Authority (SPGA) and conditions that must be met
- In Newton, SPGA is **Board of Aldermen**

- **Variance:**

- Relief from zoning when some aspect of a property *cannot* meet zoning; it is an exception from zoning
- Strictly, applicant must demonstrate **hardship** -- e.g. that zoning requirements cannot be met because of some condition unique to a particular lot (such as lot configuration)
- **ZBA** grants/denies variances

# Zoning Features



- **Lawful nonconforming building or use:**
  - “Grandfathered”
  - Predated zoning or conformed with zoning at the time building was constructed or use began
  - Can become conforming with change in use, building, or zoning
  - Special procedures, rights for nonconforming buildings or uses
- **Illegal building or use:**
  - Not allowed by zoning at the time built or when use began

# Purpose of Newton Zoning (Sec. 30-2)



## **Current:**

- Encourage most appropriate use of land, including consideration of Comprehensive Plan
- Prevent overcrowding of land/undue concentration of population
- Conserve the value of land and buildings, natural resources
- Encourage efficient use and conservation of natural resources/energy
- Lessen traffic congestion
- Assist in adequate provision of infrastructure and public facilities
- Preserve and increase amenities and aesthetics of the city
- Encourage housing for people of all income levels
- Reduce hazards from fire and other dangers
- Provide for adequate light and air

# Major Sections of Ordinance



- **Front literature: recent amendments not yet integrated into text, but in force**
- **Article I:** definitions, purpose, division into districts, uses allowed in all districts / special permits allowed in all districts
  - Public use, open space/recreation, single residence, multi residence, business, manufacturing, mixed uses
  - Uses allowed in all districts
- **Article II:** uses allowed in each district and dimensional controls
  - Includes specific regulations for certain uses, such as home businesses, accessory apartments, dormitories, wireless uses
  - Dimensional controls include required lot size, frontage, setbacks, heights, floor area ratio, etc.

# Major Sections of Ordinance



- **Article III:** parking and loading, signs, nonconforming uses
  - Regulations for number, location, design of parking spaces, bike parking, off-street loading, and signage
  - Regulations regarding buildings or lots that are lawfully nonconforming, including special permits, *de minimis* provision
- **Article IV:** zoning administration regarding accessory apartments, site plan review, special permits
  - Special permit section includes green requirements and inclusionary housing section
- **Article V-VII:** change to lot size; ZBA, enforcement, adult uses, other



# Zoning and the *Comprehensive Plan*



- Zoning is our primary tool for regulation of development and implementation of *Comprehensive Plan (2007)*
- *Comprehensive Plan* sets out goals for zoning, such as:
  - Clear intentions and goals for zoning
  - Enhanced special permit criteria
  - Inclusion of performance standards for large-scale development
  - Refine framework for review of exempt institutions
  - Consideration for overlay districts for village centers, encouraging more mixed uses in villages
  - Amendments that would encourage more affordable housing
  - Revisions that would clarify and update zoning and better reflect City policies



*Newton Centre,  
Needham Street*



# Other Ordinances/Regulations that Regulate Development



- **State Building Code**
  - Newton has adopted the optional “stretch” code
- **Other Newton Ordinances**
  - Conservation Commission (Ch. 22)
  - Historical Commission and Historic Districts, demolition delay, landmark preservation (Ch. 22)
  - Fence ordinance (Ch. 20)



# Zoning Amendments Under 40A



1. Petition
2. Public hearing before Planning Board, ZAP (14 day notice required)
3. Planning Board Report (21 days after close of hearing)
4. ZAP Working session(s)
5. ZAP vote
6. Board of Aldermen vote (2/3 vote needed to pass, must occur within 90 days of close of hearing)
7. Mayor approves

# Zoning Amendments



- Zoning amendments are legislative actions
- Amendments to other parts of City Ordinances have different procedures – for example, may not require public hearing

# Business Referred to ZAP



1. Matters relating to Inspectional Services Department, Planning Department, Conservation Commission, and Historical Commission, such as budget, policy oversight, capital improvements
2. Appointments to/policy oversight of the Planning Board, Economic Development Commission, Zoning Board of Appeals, Historical Commission, Historic District Commissions, Conservation Commission
3. Zoning map and ordinance amendments (except those related to specific individual parcels that go to Land Use Committee); matters relating to the Community Development Block Grant Program, Newton Community Development Authority, comprehensive planning, open space planning and maintenance of conservation land



# Role of Planning and Development Board



- As a **Planning Board**,
  - Advises the Board of Aldermen on zoning petitions; sits with ZAP at public hearings
  - Discusses other land use, zoning issues, and makes recommendations on proposed historic landmark designations
- As a **Board of Survey**, makes subdivision recommendations
- Serves as **Advisory Board** to the Newton Community Development Authority which issues loans for Housing & Community Development
- 6 full-time members, up to 5 alternates

# Role of the Zoning Board of Appeals



- **Responsibilities:**
  - Variances
  - Comprehensive Permit (40B) proposals
  - Appeals of decisions of the Commissioner of Inspectional Services
- **10 members (5 full, 5 alternates)**

# Challenges of Ordinance



- Can be difficult to follow, lacks use table
- Old/new lot dimensional controls can be difficult to interpret for citizen users of ordinance
- Internal inconsistencies (e.g. parking in setbacks)